Supreme Court, U.
FILED
MAR 11 197
MICHAEL RODAK, JR.,

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 72-6609

EUGENIO and ALICIA JIMENEZ, by their father and next friend, RAMON JIMENEZ, *et al.*,
Appellants,

v.

CASPAR W. WEINBERGER, Secretary of Health, Education and Welfare,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR APPELLANTS

JANE G. STEVENS
Legal Assistance Foundation
of Chicago
64 East Jackson Boulevard
Chicago, Illinois 60604
(312) 922-5625
Counsel for Appellants

JAMES D. WEILL
Legal Assistance Foundation
of Chicago
64 East Jackson Boulevard
Chicago, Illinois 60604

JOHN HENRY SCHLEGEL
State University of
New York at Buffalo
School of Law
Buffalo, New York 14260
Of Counsel

TABLE OF CONTENTS

Page

ARGUMENT:

I. The Secretary of Health, Education and Welfare Misinterprets the Purpose of The Social Security Act; Furthermore, Contrary to His Arguments, The Invidious Discrimination Herein is Not Rationally Related to the Actual Purpose of The Act. 1

II. The Secretary is Reduced to Defending the Discrimination as a Rational Means of Preventing Fraud, A Theory not Rationally Related to the Facts or Statute and Consistently Rejected by This Court. 6

III. Illegitimacy is a Suspect Classification; The Secretary has Neither Refuted this Proposition, Nor Offered a Compelling Governmental Interest that Could Justify Discrimination Against A Suspect Class. 7

CONCLUSION 12

TABLE OF CASES

Cases:

Brown v. Board of Ed., 347 U.S. 483 (1954) 9, 11

Cleveland Board of Ed. v. LaFleur, __ U.S. __, 42 U.S.L.W. 4186 (1974) 7

Dandridge v. Williams, 397 U.S. 471 (1970) 8

Frontiero v. Richardson, 411 U.S. 677 (1973) 10

Graham v. Richardson, 403 U.S. 365 (1971) 8, 9, 10

Hirabayashi v. U.S., 320 U.S. 81 (1942) 10

Jefferson v. Hackney, 406 U.S. 535 (1972) 8

Johnson v. Robison, __ U.S. __, U.S.L.W. 4313 (1974) 10

Page

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) 9, 10

Stanley v. Illinois, 405 U.S. 645 (1972) 6

Sugarman v. Dougall, __ U.S. __, 37 L. Ed. 2d 853 (1973) 10

U.S. v. Carolene Prod. Co., 304 U.S. 144 (1938) 9

U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973) 6, 7

Vlandis v. Kline, __ U.S. __, 37 L. Ed. 2d 63 (1973) 6, 7

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972) 2, 5, 10, 11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 72-6609

EUGENIO and ALICIA JIMENEZ, by their father and next friend, RAMON JIMENEZ, *et al.*,

Appellants,

v.

CASPAR W. WEINBERGER, Secretary of Health, Education and Welfare,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR APPELLANTS

ARGUMENT

I.

THE SECRETARY OF HEALTH, EDUCATION AND WELFARE MISINTERPRETS THE PURPOSE OF THE SOCIAL SECURITY ACT; FURTHERMORE, CONTRARY TO HIS ARGUMENTS, THE INVIDIOUS DISCRIMINATION HEREIN IS NOT RATIONALLY RELATED TO THE ACTUAL PURPOSE OF THE ACT.

The central argument of the Brief of the Secretary of Health, Education and Welfare is that the challenged in-

vidious discrimination effected by section 216(h)(3)[1] of the Social Security Act is constitutionally valid because it is rational in light of the purpose of the Act, which he alleges to be the replacement of pre-existing support lost by a dependent when a wage earner is no longer able to work. Not only does the Secretary measure the discrimination by the wrong standards (as discussed in Part III, *infra*, p. 7), but he also misstates the purpose of the Social Security Act.

If the purpose of the Act were merely to replace previously received support, no child would be eligible to receive Social Security benefits who had not had actual experience of support by the wage earner while the wage earner was working. That is far from the case. It is obvious that *no* children born after their fathers have ceased working will have been so supported, yet legitimate children born after their fathers have ceased working and become eligible for Social Security benefits, are not excluded from eligibility. The distinction between birth before and birth after disability is applied only to illegitimate children.[2] Replacement of support is not the exclusive purpose of the Social Security Act.

---

[1] Section 216(h)(3) of the Social Security Act (42 U.S.C. §416(h)(3)) discriminates against illegitimate children therein defined by requiring that they must have been born and have met certain other requirements before the onset of their fathers' disability or old age, in order to qualify for benefits themselves.

[2] It is true, as the Secretary points out in his brief (p.), that the section does not discriminate against *all* illegitimate children: some illegitimate children qualify for benefits under section 216(h)(2)(B) and they need not have been born before the onset of their fathers' eligibility, and some illegitimate children meet the condition of having been born before their fathers become eligible for Social Security and so are eligible. The fact that not *all* illegitimate children suffer from the discrimination does not make it any less a discrimination against illegitimate children. In *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), this Court stated that

The purpose of the Social Security Act is in fact to *provide present support* to a wage earner and/or his dependents when the wage earner cannot work because of old-age, disability, or death. (See Appellant's Brief, p. 16) And, contrary to the Secretary's allegations, the discrimination complained of here is prefectly irrational in light of that purpose.

The Secretary depends heavily in his brief on the argument that it is rational for Congress to attempt to provide benefits to those children "upon whom a wage earner's disability is likely to have the most serious impact," because of their fathers' inability to work. (Brief for Appellee, p.) The plaintiffs do not contest this point—indeed, they agree with it: it is rational for Congress to provide Social Security benefits to those most likely to suffer because of their parents' inability to work. But the discrimination complained of here is not a discrimination between those more and those less likely to have suffered "the most serious impact." The general likelihood of support for illegitimate children, apparently crucial to the Secretary, is not in fact relevant in this case.

The plaintiffs in this case, Eugenio and Alicia Jimenez, meet all the requirements of section 216(h)(3) except the requirement that they must have been born before their

---

"[I]t makes no difference that illegitimates are not so absolutely or broadly barred here as in *Levy;* the discrimination remains apparent." See Brief for Appellants, p. 19.

It is also true that the addition of section 216(h)(3) in 1965 enlarged the group of children eligible to receive Social Security benefits to include certain illegitimate children, and that this was a liberalization of the statute. It is not true, however, that Congress, in extending benefits to an additional group, may create arbitrary patterns of discrimination not rationally related to the purpose of the Act.

father became disabled. They have been formally acknowledged by their father, they have lived with him and been cared for by him and been supported by him all their lives. He is and always has been their sole source of support and nurture. No more serious impact could be felt from a father's disability than that suffered by these children.

Indeed, all children who would qualify under section 216(h)(3) but for the birth-before-disability requirement here contested, have by definition passed the threshold consideration of receipt of support or right to support. The issue of likelihood of support, so strongly emphasized in the Secretary's brief, is therefore misplaced. All the illegitimate children discriminated against herein are *by definition* receiving support, or *by definition* have received support, or *by definition* have an enforceable right to support from their wage earner fathers.[3] These standards are established by section 216(h)(3), which makes eligible for benefits only those children who have been acknowledged in writing by their fathers, or have been decreed by a court to be the children of their fathers, or who are the beneficiaries of court support orders, or who are found by the Secretary to be living with or being at least partially supported by their fathers. Children with no experience of or right to support from their fathers would not qualify for benefits under section 216(h)(3) even if they had been born before their fathers became eligible for Social Security benefits, and would not qualify for benefits under section 216(h)(3) even if

[3] The right to support is clearly adequate to a fulfillment of dependency requirements of the Social Security Act. Legitimate children need make no showing of actual dependency or receipt of support; their right to support is enough. See sections 202(d)(1) and (3) of the Social Security Act. (42 U.S.C. §402(d)(1) and (3)).

this Court decides this case in favor of the plaintiff and invalidates the exclusion of children born after the onset of disability or old age. The issue of likelihood of support is therefore not even relevant to the discrimination complained of here.

The plaintiffs do not challenge any of the requirements of section 216(h)(3) except the requirement that the children seeking to qualify under this section must have met the qualifying tests and therefore must have been born before the onset of their fathers' entitlement to Social Security. They challenge the fact that because of their date of birth they are conclusively barred from showing that they meet the other standards of the section. The Secretary's allegations that a decision for the plaintiffs will submerge the Social Security Administration in a sea of nearly impossible questions of proof requiring the "measurement [of] affection" (Brief for Appellee, p.), are therefore totally baseless. Only those children who can show actual support or right to support qualify now under section 216(h)(3), and only those who could make that showing would qualify after removal of the time requirement.[4]

---

[4]Faced with a similar argument regarding the general likelihood of support for illegitimate children, this Court in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), realized that "[W]hatever the merits elsewhere of this contention, it is not compelling in a statutory compensation scheme where dependency on the deceased is a prerequisite to anyone's recovery . . . ."

II.

THE SECRETARY IS REDUCED TO DEFENDING THE DISCRIMINATION AS A RATIONAL MEANS OF PREVENTING FRAUD, A THEORY NOT RATIONALLY RELATED TO THE FACTS OR STATUTE AND CONSISTENTLY REJECTED BY THIS COURT.

The Secretary is left with only one ground on which to rely for his argument that the exclusion of children born after the onset of their fathers' disability is constitutional: that it is a rational means of preventing fraud. The Secretary (Brief for Appellee, p.) understandably de-emphasizes the fraud-pervention defense relied on earlier by him and by the District Court, and tries to obscure it behind a smokescreen of avoiding the encouragement of "manipulation of events" primarily for the purpose of obtaining eligibility.[5] He has a good reason to down-play this argument: it cannot stand in the face of this Court's decisions in *Stanley v. Illinois*, 405 U.S. 645 (1972); *U.S. Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973); *Vlandis v. Kline*, __U.S.__ , 37 L.Ed. 2d 63 (1973); et al. (discussed in plaintiff's brief, pp. 27-36). It is, however, the Secretary's only defense.

The prevention of fraud is a valid governmental purpose, but the government's assumption here that the

---

[5] If the Secretary is implying that *fraudulent* "manipulation" is involved, his argument is the same as when it was couched simply as "fraud," discussed in the text. If he is taking issue with non-fraudulent "manipulation," all he has done is pejoratively label the valid acknowledgment by fathers of their actual illegitimate children. In the last footnote of his brief, the Secretary suggests that the plaintiff children could qualify for Social Security benefits if their father adopted them. Surely the Secretary does not mean to encourage Ramon Jimenez to do exactly what he, the Secretary, has railed against throughout his brief: manipulate events in order to obtain benefits.

classification at issue serves to prevent fraud is surely as "wholly unsubstantiated" as its comparable assumption about the Food Stamp classification struck down in *U.S. Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973). The Secretary has never produced the slightest evidence that the discrimination directed against illegitimate children here prevents fraudulent conduct. Even if there were such evidence, however, the blanket exclusion of an entire group of potentially eligible applicants in order to avoid the administrative effort necessary to eliminate the fraudulent claims, is an impermissible use of an irrebutable presumption in violation of the due process clause of the Fifth Amendment. *Vlandis v. Kline*, __ U.S.__, 37 L. Ed. 2d 63 (1973); *U.S. Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973); and see *Cleveland Board of Ed. v. LaFleur*, __U.S.__, 42 U.S.L.W. 4187 (1974). The Secretary's dismissal, in a footnote (Brief for Appellee, p.), of the now firmly established doctrine of irrebutable presumption, hardly suffices to distinguish the line of cases presented in plaintiff's opening brief.

III.

ILLEGITIMACY IS A SUSPECT CLASSIFICATION; THE SECRETARY HAS NEITHER REFUTED THIS PROPOSITION, NOR OFFERED A COMPELLING GOVERNMENTAL INTEREST THAT COULD JUSTIFY DISCRIMINATION AGAINST A SUSPECT CLASS.

The Secretary's contention that the invidious discrimination worked by section 216(h)(3) is constitutionally permissible because it is "rationally based" is unsupported. The exclusion of after-born illegitimate children is not rationally related to the purpose of the Social Security Act, and neither is the exclusion an acceptable

means of preventing fraud or saving administrative effort. But the Secretary's position is faulty for still another reason: he has defended the invidious discrimination on the basis of the wrong constitutional standard. The discrimination against illegitimate children effected by section 216(h)(3) can be constitutionally acceptable only if it can withstand strict judicial scrutiny because a statutory classification based on the status of illegitimacy is inherently suspect, as was argued in the Brief for Appellants at pages 38-44.[6]

The Secretary of Health, Education and Welfare's contention, in his brief (p.), that the challenged section need only be "rationally based" because it involves benefits provided in the area of social welfare, and not "freedoms guaranteed by the Bill of Rights," misconstrues plaintiffs' argument. Plaintiffs do not argue that the classification herein must be strictly scrutinized because a fundamental right is involved. Thus the line of cases including *Dandridge v. Williams*, 397 U.S. 471 (1970), and *Jefferson v. Hackney*, 406 U.S. 535 (1972), cited by the Secretary is, irrelevant, as the nature of the benefits or interest conferred is not at issue. What is at issue is the identity of the disadvantaged group, the classification of those excluded from eligibility for the benefits. The challenged section must be subject to strict scrutiny because it excludes a group of potentially eligible applicants on the basis of their status as illegitimate children. The distinction between the two aspects of the doctrine is illustrated by *Graham v. Richardson*,

---

[6]The discrimination here complained of can therefore be constitutionally permissible only if it is justified by a compelling state interest. It is not. The Secretary's rationales are inadequate under the traditional test, and clearly do not present a compelling governmental interest that can withstand heightened scrutiny. See Brief for Appellants, pp. 38-44.

403 U.S. 365 (1971). *Graham* involved the same type of social welfare benefits as had *Dandridge*. This Court applied the strict scrutiny test in *Graham* not because a fundamental interest was involved, but because benefits were denied to a group of otherwise potentially eligible applicants on the basis of their status as aliens, a "suspect" classification. Similarly, the fact that education is not a fundamental right (*San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)) has not prevented this Court from applying strict scrutiny to situations in which black students suffer discrimination as black students, because classification by race is constitutionally suspect. (E.g., *Brown v. Board of Ed.*, 347 U.S. 483 (1954)). If illegitimacy is properly a suspect class, discrimination against illegitimate children must be subject to strict judicial scrutiny in whatever context it appears, whether a social welfare program or a fundamental right. And indeed as plaintiffs argued in their opening brief in this case, classification on the basis of illegitimacy is "suspect": it fits within the standards articulated by this Court in its designation of other classifications as "suspect" (Brief for Appellants, pp. 29-42). Several members of this Court have recognized this fact. (Brief for Appellants, p. 42)

The Secretary's attempt to refute plaintiffs' argument is very limited. The Secretary does not dispute the appropriateness of the most crucial elements of the standard. He does not deny appellant's contention that illegitimates are a "discrete and insular minority," requiring heightened judicial solicitude. *United States v. Carolene Prod. Co.*, 304 U.S. 144, 153, n.4 (1938), *Graham v. Richardson*, 403 U.S. 365, 372 (1971). Nor does he dispute that illegitimates have been and are "saddled with such disabilities, or subject to such a history of purposeful inequal treatment or relegated to

such a position of political powerlessness as to command extraordinary protection . . . ." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973). See also *Johnson v. Robinson*, 42 U.S.L.W. 4313, 4317, footnote 14. Nor does he take issue with the fact that illegitimacy is "determined solely by the accident of birth [and therefore] the imposition of special disabilities . . . would seem to violate 'the basic concept of our system that legal burdens should bear some relationship to individual responsibility. . . .' *Weber v. Aetna Casualty & Surety Co.*, . . . [and] bears no relation to ability to perform or contribute to society." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

The Secretary makes his stand against the recognition of illegitimacy as suspect on the shaky ground of the standards of "immutability" and "visibility." (Brief for the Appellee, p.). These may be factors to be weighed, but the relevant cases make clear that neither clear visibility nor absolute immutability is a prerequisite to a finding that a classification is suspect. The strict scrutiny test has consistently been applied to classifications on the basis of alienage and national ancestry. *Sugarman v. Dougall*, __ U.S. __, 37 L.Ed. 2d 553 (1973); *Graham v. Richardson*, 403 U.S. 365 (1971); *Hirabayashi v. U.S.*, 320 U.S. 81 (1942). Neither status is visible. Similarly, the application of the suspect classification test to aliens indicates that "immutability" is not a controlling factor. Indeed, from the perspective of the persons classified, alien status is much less "immutable" than illegitimacy. An alien can, under certain circumstances, choose to change his status.[7] An illegitimate child cannot. He can be legitimated only if his parents,

[7] 8 U.S.C. §1427.

who are responsible for his illegitimate status to begin with, take the necessary actions.

In sum, it is hard to imagine an instance in which heightened judicial solicitude is more appropriate than one involving discrimination against illegitimate children. This Court's past expressions on this test represent varying articulations and shadings of a common theme: the historical and ongoing imposition of political, social and legal disabilities and isolation upon a group makes appropriate a close scrutiny of a discrimination against the group. Where the legal classification in issue perpetuates or intensifies the disabilities, and/or further stigmatizes and isolates the group, then that classification must be justified by a compelling governmental interest. As this Court said in *Brown v. Board of Education*, 347 U.S. 483, 494 (1954):

> "To separate [these children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone .... Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group."

The discrimination herein against illegitimate children similarly has a detrimental effect, the impact of which is intensified because it has the sanction of this law. Furthermore, the historical discrimination[8] perpetuated

---

[8] This Court has recognized that illegitimacy has been stigmatized throughout history. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1962).

by this law can only be interpreted as imputing lesser worth to the illegitimate children. And the denotation of inferiority by law and society can only create within the faultless children themselves a dimunition of feelings of self-worth. This and other discriminations against illegitimates should therefore be designated suspect.

CONCLUSION

It is therefore respectfully submitted that the judgment of the district court should be reversed.

Respectfully submitted,

JANE G. STEVENS
Legal Assistance Foundation
of Chicago
64 East Jackson Boulevard
Chicago, Illinois 60604
(312) 922-5625

Counsel for Appellants

JAMES D. WEILL
Legal Assistance Foundation
of Chicago
64 East Jackson Boulevard
Chicago, Illinois 60604
(312) 922-5625

JOHN HENRY SCHLEGEL
State University of
New York at Buffalo
School of Law
Buffalo, New York 14260

Of Counsel

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JIMENEZ ET AL. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 72-6609. Argued March 18, 1974—Decided June 19, 1974

Under the Social Security Act illegitimate children are by statute deemed entitled to disability insurance benefits without any showing that they are in fact dependent upon their disabled parent if state law permits them to inherit from the wage earner parent; or if their illegitimacy results solely from formal, nonobvious defects in their parents' ceremonial marriage; or if they are legitimated in accordance with state law. An illegitimate child unable to meet any of the foregoing conditions can qualify only if the disabled wage earner parent contributed to the child's support or lived with him or her prior to the parent's disability, 42 U. S. C. 416 (h)(3)(B), and, if the child is born after the onset of the parent's disability and is unable to qualify under any of the foregoing provisions, the statute bars the child's benefits without any opportunity to establish entitlement thereto, *ibid.* Ramon Jimenez, a resident of Illinois (which does not allow nonlegitimated illegitimate children to inherit from their father), is a wage earner covered by the Act who became entitled to disability benefits in October 1963. Thereafter, Jimenez applied for insurance benefits for appellants, two of his nonlegitimated illegitimate children who were born after the onset of disability; the claims were denied since the children did not meet the requirements of 42 U. S. C. § 416 (h)(3)(B) or the other qualifying provisions of the Act. Appellants brought this action for review of the denial of benefits. A three-judge District Court upheld the statutory classification as being rationally related to the proper governmental interest of avoiding spurious claims. *Held:* Title 42 U. S. C. § 416 (h)(3)(B), as part of the statutory scheme applicable to illegitimates, contravenes the equal protection pro-

Syllabus

visions of the Due Process Clause of the Fifth Amendment. Pp. 3–9.

(a) "[T]he Equal Protection Clause [is violated by] discriminatory laws relating to the status of birth where . . . the classification is justified by no legitimate state interest, compelling or otherwise." *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 175–176. *Dandridge* v. *Williams*, 397 U. S. 471, distinguished. Pp. 3–5.

(b) The primary purpose of the contested provision of the Act is to provide support for dependents of a disabled wage earner and is not, as appellee contends, to replace only that support actually enjoyed before the onset of disability. Pp. 5–6.

(c) The complete statutory bar to disability benefits imposed upon nonlegitimated after-born illegitimates in appellants' position, is not reasonably related to the valid governmental interest of preventing spurious claims. The potential for spurious claims is the same as to both. Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parents, the Act's definition of two subclasses of illegitimates is "over-inclusive" in that it benefits some children who are legitimated, or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent on their disabled parent. Conversely, the Act is "under-inclusive" in that it conclusively excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Pp. 6–8.

(d) The judgment is vacated and the case is remanded to provide appellants an opportunity to establish their claim to eligibility as "children" of the claimant eligible for benefits under the Act. P. 8.

353 F. Supp. 1356, vacated and remanded.

BURGER, C. J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, WHITE, MARSHALL, BLACKMUN, and POWELL, JJ., joined. REHNQUIST, J., filed a dissenting opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 72–6609

Eugenio and Alicia Jimenez, Etc., Appellants, *v.* Caspar W. Weinberger, Secretary of Health, Education and Welfare.	On Appeal from the United States District Court for the Northern District of Illinois.

[June 19, 1974]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

A three-judge District Court in the Northern District of Illinois upheld the constitutionality of a provision of the Social Security Act which provides that certain illegitimate children, who cannot qualify for benefits under any other provision of the Act, may obtain benefits if, but only if, the disabled wage earner parent is shown to have contributed to the child's support or to have lived with him prior to the parent's disability.[1] The District Court held that the statute's classification is rationally related to the legitimate governmental interest in avoiding suprious claims. *Jimenez* v. *Richardson*, 353 F. Supp. 1356, 1361 (ND Ill. 1973). We noted probable jurisdiction. 414 U. S. 1061.

The relevant facts are not in dispute. Ramon Jimenez, a wage earner covered under the Social Security Act, became disabled in April 1963, and became entitled to disability benefits in October 1963. Some years prior to that time, the claimant separated from his wife and began living with Elizabeth Hernandez, whom he never mar-

[1] 42 U. S. C. § 416 (h)(3).

ried. Three children were born to them, Magdalena, born August 13, 1963, Eugenio, born January 18, 1965, and Alicia, born February 24, 1968. These children have lived in Illinois with claimant all their lives; he has formally acknowledged them to be his children, has supported and cared for them since their birth, and has been their sole caretaker since their mother left the household late in 1968. Since the parents never married, appellants are classified as illegitimate under Illinois law and are unable to inherit from their father because they are nonlegitimated illegitimate children. Ill. Ann. Stat., c. 4, § 12.

On August 21, 1968, Ramon Jimenez, as the father, filed an application for child's insurance benefits on behalf of these three children. Magdalena was found to be entitled to child's insurance benefits under the statute because she had been conceived before Jimenez became disabled and no issue is presented with respect to her entitlement to benefits. The claims of Eugenio and Alicia were denied, however, on the grounds that they did not meet the requirements of 42 U. S. C. § 416 (h) (3), since neither child's paternity had been acknowledged or affirmed through evidence of domicile and support before the onset of their father's disability.[2] In all other re-

[2] The contested Social Security scheme provides, in essence, that legitimate or legitimated children (42 U. S. C. § 402 (d) (3)), illegitimate children who can inherit their parent's personal property under the intestacy laws of the State of the insured's domicile (42 U. S. C. § 416 (h) (2) (A)), and those children who cannot inherit only because their parents' ceremonial marriage was invalid for nonobvious defects (42 U. S. C. § 416 (h) (B)), are entitled to receive benefits without any further showing of parental support. However, illegitimate children such as Eugenio and Alicia who were born after their father became entitled to disability or death insurance benefits, and who do not fall into one of the foregoing categories, are not entitled to receive any benfits. 42 U. S. C. § 416 (h) (3).

spects Eugenio and Alicia are eligible to receive child's insurance benefits and their applications were denied solely because they are proscribed illegitimate children born after the onset of the father's disability.

Appellants urge that the contested Social Security provision is based upon the so-called "suspect classification" of illegitimacy. Like race and national origin, they argue, illegitimacy is a characteristic determined solely by the accident of birth, it is a condition beyond the control of the children, and it is a status that subjects the children to a stigma of inferiority and a badge or opprobrium. We need not reach appellants' argument, however, because in the context of this case it is enough that we note, as we did in *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, that:

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where . . . the classification is justified by no legitimate state interest, compelling or otherwise." 406 U. S., at 175–176.

Conversely, the Secretary urges us to uphold this statutory scheme on the ground that the case is controlled by